



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 26, 1993

Mr. Wayne Bingham  
Superintendent of Schools  
Rockwall Independent School District  
801 East Washington  
Rockwall, Texas 75087

OR93-548

Dear Mr. Bingham:

The Rockwall Independent School District (the "school district") received a request for "copies of the F.Y.I.'s for August, September and October 1992 that you sent to the School Board" and requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. You claimed that section 3(a)(11) excepts the requested information from required public disclosure. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 3(a)(11) exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now consider the additional arguments you have submitted for withholding the requested documents under section 3(a)(11) of the act. We have assigned your request ID# 18625.

We have examined the information submitted to us for review. Although the attorney general will not ordinarily raise an exception that the governmental body has failed to claim, we will raise section 3(a)(1) because the release of confidential information could impair the rights of third parties and because improper release constitutes a misdemeanor. See V.T.C.S. art. 6252-17a, § 10(a); Open Records Decision Nos. 455 (1987); 325 (1982). Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Some of the information submitted to us for review identifies or tends to identify school district students. The federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)...) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

*Id.* § 1232g(a)(4)(A); *see also* V.T.C.S. art. 6252-17a, § 14(e) (incorporating the requirements of FERPA into the Open Records Act). FERPA may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a student" or one or both of his parents. Open Records Decision Nos. 332 (1982); 206 (1978). Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure. For your convenience, we have marked the information that identifies or tends to identify students. This information must be withheld from required public disclosure under section 3(a)(1) in conjunction with FERPA.

Next, we consider your assertion that section 3(a)(11) excepts some of the requested information from required public disclosure. Section 3(a)(11) excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass routine internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. In addition, section 3(a)(11) does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

You have marked the portions of the requested documents that you seek to withhold under section 3(a)(11). The marked information relates to various school district matters, including items titled "Administrative Change at High School" (item 1 on F.Y.I. dated September 4, 1992); the "Ronnie Thompson Case" (item 11 on F.Y.I. dated September 11, 1992); "Planning" (item 1 on F.Y.I. dated September 18, 1992); "Alternate Calendars" (item 2 on F.Y.I. dated September 18, 1992); "Student and Teacher Confrontation" (item 3 on F.Y.I. dated September 18, 1992); RISD vs. Texas Independent Development" (item 11 on F.Y.I. dated October 2, 1992, including Attachment C); "Ronnie Thompson vs. RISD" (item 12 on F.Y.I. dated October 2, 1992); "Special Education Incident" (item 1 on F.Y.I. dated October 30, 1992); and "Open Records Act Applies to FYI" (item 5 on F.Y.I. dated October 30, 1992). Some of this

information relates to school district routine administrative or personnel matters, or is purely factual in nature and does not fall within the ambit of the section 3(a)(11) exception. The remaining, information, however, contains material reflecting the school district's policymaking processes. We have marked the information that may be withheld under section 3(a)(11). The remaining information, except as noted above must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/GCK/jmn

Enclosures: Open Records Decision No. 615

Ref.: ID# 18625

cc: Ms. Renee H. Wainwright  
206 James Drive  
Heath, Texas 75087  
(w/o enclosures)